

On November 23, 2010, the Court issued an Order (#724) denying Defendant Countrywide Home Loans' Motion to Stay Briefing on the issue of class certification until resolution of the current

1 pending Motions to Dismiss Plaintiffs' Third Amended Complaint. Specifically the Court denied the
2 Motion, stating that Federal jurisdiction in this case hinges upon approval of Plaintiffs' class
3 certification. Moreover, because the Court has previously expressed doubt regarding the typicality
4 and commonality of Plaintiffs' alleged claims, it found that the issue of class certification is germane
5 to any discussion of dismissal.

6 Additionally, on June 20, 2011 the United States Supreme Court decided Wal-Mart Stores,
7 Inc. v. Dukes, 2011 WL 2437013 (U.S. 2011). The Ninth Circuit's previous ruling in this case was
8 relied on by both Plaintiffs and Defendants in their oppositions and replies.

9 The Court has reviewed the pending motions, joinders and responsive pleadings. In light of
10 the issues raised in these motions, the Court will lift the PSLRA and permit the Defendants to
11 conduct limited discovery related only to the class certification issue. Defendants will have 60 days
12 to conduct this discovery and file supplemental briefs in opposition to Plaintiffs' Motion to Certify as
13 a Class Action (#706). Plaintiffs will have seven days to reply in accordance with Local Rule 7-2.

14 **I. Legal Standard**

15 The Supreme Court has recently held that "'sometimes it may be necessary for the court to
16 probe behind the pleadings before coming to rest on the certification question,'" and that certification
17 is proper only if 'the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule
18 23(a) have been satisfied,'" Wal-Mart Stores, Inc. v. Dukes, 2011 WL 2437013 *7 (U.S. 2011)
19 (quoting General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 161 (1982)).

20 Section 4(b)(3)(B) of the PSLRA., states that, "[i]n any private action arising under this title,
21 all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss,
22 unless the court finds upon the motion of any party that particularized discovery is necessary to
23 preserve evidence or to prevent undue prejudice to that party."

24 Under the P.S.L.R.A., a request for discovery is "particularized" when it "is necessary to
25 preserve evidence or to prevent undue prejudice to [the moving] party." 15 U.S.C. § 78u-4(b)(3)(B);

1 Ross v. Abercrombie & Fitch Co., 2006 WL 2869588, at *2 (S.D. Ohio Oct. 5, 2006) (“[T]he focus
2 of the statutory language is on the need either to preserve evidence in the case (presumably because,
3 if the discovery were not permitted, such evidence would be destroyed) or to prevent *undue* prejudice
4 to the plaintiff.”) (emphasis in original).

5 Here, Defendants seek a lift of the PSLRA’s automatic stay provision for the limited purpose
6 of allowing the Court to conduct the required analysis on the issue of class certification. Though,
7 Defendants have not argued prejudice specifically, prejudice is implied due to Plaintiffs’ admission
8 that this Court’s subject matter jurisdiction hinges solely on class certification. A finding that the
9 action does not qualify for class certification would destroy subject matter jurisdiction and mandate
10 dismissal.

11 Accordingly, **IT IS HEREBY ORDERED** that Defendants’ Motion to Lift Stay (#723) to
12 which Countrywide joined (#743) is **GRANTED**.

13 **IT IS HEREBY ORDERED** that Defendants’ Motion to Extend Time (#722) is **DENIED**
14 as moot.

15 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion for Oral Hearing on Order Shortening
16 Time on All Motions Pending Longer than 60 Days (#806) is **DENIED**.

17 **IT IS FURTHER ORDERED** that the PSLRA’s automatic stay provision is lifted for the
18 limited purpose of discovery on the issue of class certification. Defendants shall file responsive
19 pleadings to Plaintiffs’ Motion to Certify Class (#706), on or before August 24, 2011. Plaintiffs’
20 reply will be due seven days later, in accordance with Local Rule 7-2. No extensions of discovery or
21 briefing will be granted.

22 DATED this 24th day of June 2011.

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25 Kent J. Dawson
26 United States District Judge